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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2865

Introduced by Assembly Member Torrico
(Principal coauthor: Assembly Member Montanez)
(Coauthors: Assembly Members Jones, Koretz, Lieber, Lieu,
Strickland, and Pavley)
(Coauthor: Senator Migden)

February 24, 2006

An act to amend Sections 17609, 17610, 17610.1, and 17612 of the Education Code, to amend Sections 13181, 13183, 13185, and 13186 of the Food and Agricultural Code, to amend Section 1596.845 of, and to add Section 1596.794 to the Health and Safety Code, relating to school safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2865, as amended, Torrico. School safety.

Existing law, the Healthy Schools Act of 2000 requires that the preferred method of managing pests at schoolsites be to use effective, least toxic pest management practices and requires schoolsites to maintain records of all pesticides used at the schoolsite for a period of 4 years. Existing law requires schools to provide all staff and parents

or guardians of pupils enrolled at a school written notification of, among other things, expected pesticide use at that site.

This bill would expand the definition of “schoolsite” as used in these provisions to also include private child day care facilities, as specified. This bill would also require property owners to notify tenants who operate a child day care facility of their pest management practices and to provide a specified notice prior to the application of pesticides. This bill would also require child day care facilities to inform contractors hired to apply pesticide at the schoolsite that the facility must comply with the act and require persons hired to apply pesticides at a child day care facility to provide specified information to the facility. This bill would require the Department of Pesticide Regulation to promote and facilitate the adoption of integrated pest management programs at child day care facilities, as specified. This bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17609 of the Education Code is
2 amended to read:
3 17609. The definitions set forth in this section govern the
4 construction of this article unless the context clearly requires
5 otherwise:
6 (a) “Antimicrobial” means those pesticides defined by the
7 Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
8 Sec. 136(mm)).
9 (b) “Crack and crevice treatment” means the application of
10 small quantities of a pesticide consistent with labeling
11 instructions in a building into openings such as those commonly
12 found at expansion joints, between levels of construction and
13 between equipment and floors.
14 (c) “Emergency conditions” means any circumstances in
15 which the school designee or a property owner of a property
16 where a ~~privately-operated~~ *privately operated* child day care
17 facility is located, or the property owner’s agent, deems that the
18 immediate use of a pesticide is necessary to protect the health
19 and safety of pupils, staff, or other persons, or the schoolsite. A
20 *written request from a privately operated child day care facility*

1 *to a property owner or his or her agent, stating that there is an*
 2 *emergency condition conclusively establishes that an emergency*
 3 *condition exists.*

4 (d) "School designee" means the individual identified by a
 5 schoolsite or school district to carry out the requirements of this
 6 article at the schoolsite.

7 (e) "Schoolsite" means any facility used as a child day care
 8 facility, as defined in Section 1596.750 of the Health and Safety
 9 Code, or for kindergarten, elementary, or secondary school
 10 purposes. The term includes the buildings or structures,
 11 playgrounds, athletic fields, vehicles, or any other area of
 12 property visited or used by pupils. "Schoolsite" does not include
 13 any postsecondary educational facility attended by secondary
 14 pupils or private kindergarten, elementary, or secondary school
 15 facilities. For child day care facilities, the State Department of
 16 Social Services shall serve as the liaison to these facilities, as
 17 needed.

18 SEC. 1.5. Section 17610 of the Education Code is amended to
 19 read:

20 17610. (a) It is the policy of the state that effective least toxic
 21 pest management practices should be the preferred method of
 22 managing pests at schoolsites and that the state, in order to
 23 reduce children's exposure to toxic pesticides, shall take the
 24 necessary steps, pursuant to Article 17 (commencing with
 25 Section 13180) of Chapter 2 of Division 7 of the Food and
 26 Agricultural Code, to facilitate the adoption of effective least
 27 toxic pest management practices at schoolsites. It is the intent of
 28 the Legislature to encourage appropriate training to be provided
 29 to school personnel involved in the application of a pesticide at a
 30 schoolsite.

31 (b) (1) A property owner of a property where a child day care
 32 facility is located, or the property owner's agent, who personally
 33 applies any pesticides on any area listed in paragraph (2) shall
 34 provide notice to the child day care facility as described in
 35 paragraph (3) at least 120 hours before the application, unless an
 36 emergency condition, as defined in Section 17609, exists. ~~If child~~
 37 ~~day care facility fails to provide the property owner or his or her~~
 38 ~~agent proper notice of the presence of the child day care facility,~~
 39 ~~then the requirements of this subdivision do not apply.~~

40 A property owner

1 *An owner of property on which a child day care facility is*
2 *located* shall be subject to the requirement to provide notice
3 pursuant to this subdivision 30 days after it has received notice
4 from a child day care facility of its presence at the property,
5 unless the property owner, or his or her agent received that notice
6 pursuant to paragraph (1) of subdivision (d) of Section 1597.40
7 of the Health and Safety Code prior to the effective date of this
8 subdivision in which case the property owner will be subject to
9 the notice requirements on and after the effective date of this
10 subdivision.

11 (2) This subdivision applies when a property owner or his or
12 her agent intend to personally apply pesticides on any of the
13 following:

14 (A) Inside the *rented premises on which* child day care facility
15 *is located*.

16 (B) Upon a designated child day care facility playground.

17 (C) Upon an area designated for use by the child day care
18 facility.

19 (D) Upon an area within 10 feet of the perimeter of the child
20 day care facility, *except for areas exclusively used by others*.

21 (3) The notice required by paragraph (1) shall include the
22 following:

23 (A) The product name.

24 (B) The manufacturer's name.

25 (C) The active ingredients of each pesticide.

26 (D) The United States Environmental Protection Agency's
27 product registration number.

28 (E) The intended date of application.

29 (F) ~~The areas of application~~ *Those areas of application listed*
30 *in paragraph (2).*

31 (G) The reason for application.

32 (4) A notice of pesticide application provided to a tenant
33 pursuant to subdivision (d) of Section 13186 of the Food and
34 Agricultural Code shall satisfy the notice requirements of this
35 section.

36 (5) *If the child day care facility ceases to operate on the*
37 *property, the provisions of this act shall no longer apply to the*
38 *property.*

39 SEC. 2. Section 17610.1 of the Education Code is amended to
40 read:

17610.1. (a) (1) The use of a pesticide on a schoolsite is prohibited if that pesticide is granted a conditional registration, an interim registration, or an experimental use permit by the Department of Pesticide Regulation, or if the pesticide is subject to an experimental registration issued by the United States Environmental Protection Agency, and either of the following is applicable:

(A) The pesticide contains a new active ingredient.

(B) The pesticide is for a new use. This paragraph does not apply to a conditionally registered pesticide that is approved for other uses that has fulfilled all registration requirements that relate to human health, including, but not limited to, the completion of mandatory health effect studies pursuant to the Birth Defect Prevention Act of 1984 (Art. 14 (commencing with Sec. 13121), Ch. 2, Div. 7, F. & A.C.). The requirements of this section are not intended to impose any new labeling requirements.

(2) The use of a pesticide on a schoolsite is prohibited if the Department of Pesticide Regulation cancels or suspends registration, or requires phase out of use, of that pesticide.

(b) Vendors or manufacturers of pesticides that are prohibited for use on a schoolsite pursuant to subdivision (a) are prohibited from furnishing those pesticides to school districts or schoolsites either by sale or by gift.

(c) This section does not apply to public health pesticides or antimicrobial pesticides registered pursuant to Section 12836 of the Food and Agricultural Code.

SEC. 3. Section 17612 of the Education Code is amended to read:

17612. (a) The school designee shall annually provide to all staff and parents or guardians of pupils enrolled at a schoolsite a written notification of the name of all pesticide products expected to be applied at the schoolsite during the upcoming year. The notification shall identify the active ingredient or ingredients in each pesticide product. The notice shall also contain the Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Section 13184 of the Food and Agricultural Code and may contain other information deemed necessary by the school designee. No other written notification of

1 pesticide applications shall be required by this act except as
2 follows:

3 (1) In the written notification provided pursuant to this
4 subdivision, the school designee shall provide the opportunity for
5 recipients to register with the schoolsite if they wish to receive
6 notification of individual pesticide applications at the schoolsite.
7 Persons who register for notification shall be notified of
8 individual pesticide applications at least 72 hours prior to the
9 application. The notice shall include the product name, the active
10 ingredient or ingredients in the product, and the intended date of
11 application.

12 (2) If a pesticide product not included in the annual
13 notification is subsequently intended for use at the schoolsite, the
14 school designee shall, consistent with this subdivision and at
15 least 72 hours prior to application, provide written notification of
16 its intended use.

17 (b) The school designee shall make every effort to meet the
18 requirements of this section in the least costly manner. Annual
19 notification by a school district to parents and guardians shall be
20 provided pursuant to Section 48980.3. Any other notification
21 shall, to the extent feasible and consistent with the act adding this
22 article, be included as part of any other written communication
23 provided to individual parents or guardians. Nothing in this
24 section shall require the school designee to issue the notice
25 through first-class mail, unless he or she determines that no other
26 method is feasible.

27 (c) Pest control measures taken during an emergency condition
28 as defined in Section 17609 shall not be subject to the
29 requirements of paragraphs (1) and (2) of subdivision (a).
30 However, the school designee or property owner shall make
31 every effort to provide the required notification for an application
32 of a pesticide under emergency conditions.

33 (d) The school designee shall post each area of the schoolsite
34 where pesticides will be applied with a warning sign. The
35 warning sign shall prominently display the term
36 "Warning/Pesticide Treated Area" and shall include the product
37 name, manufacturer's name, the United States Environmental
38 Protection Agency's product registration number, intended date
39 and areas of application, and reason for the pesticide application.
40 The warning sign shall be visible to all persons entering the

1 treated area and shall be posted 24 hours prior to the application
2 and remain posted until 72 hours after the application. In case of
3 a pest control emergency, the warning sign shall be posted
4 immediately upon application and shall remain posted until 72
5 hours after the application.

6 (e) Subdivisions (a) and (d) shall not apply to schools operated
7 by the Division of Juvenile Justice. The school administrator of a
8 school operated by the Division of Juvenile Justice shall notify
9 the chief medical officer of that facility at least 72 hours prior to
10 application of pesticides. The chief medical officer shall take any
11 steps necessary to protect the health of pupils in that facility.

12 (f) This section and Section 17611 shall not apply to activities
13 undertaken at a school by participants in the state program of
14 agricultural vocational education, pursuant to Article 7
15 (commencing with Section 52450) of Chapter 9 of Part 28, if the
16 activities are necessary to meet the curriculum requirements
17 prescribed in Section 52454. Nothing in this subdivision relieves
18 schools participating in the state program of agricultural
19 vocational education of any duties pursuant to this section for
20 activities that are not directly related to the curriculum
21 requirements of Section 52454.

22 (g) This section shall not apply to operators, residents, or staff
23 members of family day care homes, as defined in Section
24 1596.78 of the Health and Safety Code, who apply pesticides
25 themselves rather than use contractors or others to apply
26 pesticides.

27 ~~(h) If a property owner or his or her agent fails to provide~~
28 ~~notice of pesticide application pursuant to subdivision (e) of~~
29 ~~Section 17610, then the requirements of this section do not apply~~
30 ~~to the privately-operated child day care facility. pesticide is~~
31 ~~applied by a property owner or his or her agent, or by a pest~~
32 ~~control operator; failure to provide notice pursuant to~~
33 ~~subdivision (b) of Section 17610 or subdivision (d) of Section~~
34 ~~13186 of the Food and Agricultural Code shall relieve a~~
35 ~~privately operated child day care facility from the requirements~~
36 ~~of this section.~~

37 SEC. 3.5. Section 13181 of the Food and Agricultural Code is
38 amended to read:

39 13181. Notwithstanding any other provision of law, for
40 purposes of this article, “integrated pest management” means a

1 pest management strategy that focuses on long-term prevention
2 or suppression of pest problems through a combination of
3 techniques such as monitoring for pest presence and establishing
4 treatment threshold levels, using nonchemical practices to make
5 the habitat less conducive to pest development, improving
6 sanitation, and employing mechanical and physical controls.
7 Pesticides that pose the least possible hazard and are effective in
8 a manner that minimizes risks to people, property, and the
9 environment, are used only after careful monitoring indicates
10 they are needed according to preestablished guidelines and
11 treatment thresholds. This definition shall apply only to
12 integrated pest management at school facilities and child day care
13 facilities.

14 SEC. 4. Section 13183 of the Food and Agricultural Code is
15 amended to read:

16 13183. The Department of Pesticide Regulation shall promote
17 and facilitate the voluntary adoption of integrated pest
18 management programs for schoolsites, excluding
19 privately-operated child day care facilities, as defined in Section
20 1596.750 of the Health and Safety Code, that voluntarily choose
21 to do so. For these schoolsites, the department shall do all of the
22 following:

23 (a) Establish an integrated pest management program for
24 schoolsites consistent with Section 13181. In establishing the
25 program, the department shall:

26 (1) Develop criteria for identifying least-hazardous pest
27 control practices and encourage their adoption as part of an
28 integrated pest management program at each schoolsite.

29 (2) Develop a model program guidebook that prescribes
30 essential program elements for schoolsites that have adopted a
31 least-hazardous integrated pest management program. At a
32 minimum, this guidebook shall include guidance on all of the
33 following:

34 (A) Adopting an IPM policy.

35 (B) Selecting and training an IPM coordinator.

36 (C) Identifying and monitoring pest populations and damage.

37 (D) Establishing a community-based school district advisory
38 committee.

39 (E) Developing a pest management plan for making
40 least-hazardous pest control choices.

1 (F) Contracting for integrated pest management services.

2 (G) Training and licensing opportunities.

3 (H) Establishing a community-based right-to-know standard
4 for notification and posting of pesticide applications.

5 (I) Recordkeeping and program review.

6 (b) Make the model program guidebook available to
7 schoolsites and establish a process for systematically updating
8 the guidebook and supporting documentation.

9 (c) Promote and facilitate the voluntary adoption of integrated
10 pest management programs at child day care facilities, as defined
11 in Section 1596.750 of the Health and Safety Code, through the
12 following:

13 (1) Modifying the department's existing integrated pest
14 management program for schoolsites as described in subdivision
15 (a) of Section 13183 for the child day care setting.

16 (2) Creating or modifying existing educational and
17 informational materials on integrated pest management for the
18 child day care setting.

19 (3) Making the materials available to child day care facilities
20 and establishing a process for systematically updating them.

21 SEC. 5. Section 13185 of the Food and Agricultural Code is
22 amended to read:

23 13185. (a) The department shall establish an integrated pest
24 management training program in order to facilitate the adoption
25 of a model IPM program and least-hazardous pest control
26 practices by schoolsites. In establishing the IPM training
27 program, the department shall do all of the following:

28 (1) Adopt a "train-the-trainer" approach, whenever feasible, to
29 rapidly and broadly disseminate program information.

30 (2) Develop curricula and promote ongoing training efforts in
31 cooperation with the University of California and the California
32 State University.

33 (3) Prioritize outreach on a regional basis first and then to
34 school districts. For outreach to child day care facilities, the
35 department shall participate in existing ~~training~~ *trainings* that
36 ~~provides~~ *provide* opportunities for disseminating program
37 information broadly on a regional basis.

38 (b) Nothing in this article shall preclude a schoolsite from
39 adopting stricter pesticide use policies.

SEC. 6. Section 13186 of the Food and Agricultural Code is amended to read:

13186. (a) The Legislature finds and declares that the Department of Pesticide Regulation, pursuant to Section 12979 of the Food and Agricultural Code and Sections 6624 and 6627 of Title 3 of the California Code of Regulations, requires persons engaged for hire in the business of pest control to maintain records of pesticide use and report a summary of that pesticide use to the county agricultural commissioner or director. The Legislature further finds and declares that it is in the interest of the state, in implementing a school integrated pest management program pursuant to this article, to collect specified information on the use of pesticides at schoolsites.

(b) The Department of Pesticide Regulation shall prepare a school pesticide use form to be used by licensed and certified pest control operators when they apply any pesticides at a schoolsite. The form shall include, for each application at a schoolsite, the name and address of the schoolsite, date and location of application, pesticide product name, and the quantity of pesticide used. Nothing in this section shall change any existing applicable pesticide use reporting requirements.

(c) Persons who are required to submit pesticide use records to the county agricultural commissioner or director shall complete and submit to the director the school pesticide use forms established pursuant to this section. The forms shall be submitted annually and may be submitted more often at the discretion of the pest control operator maintaining the forms. Child day care facilities, as defined in Section 1596.750 of the Health and Safety Code, which are subject to the Healthy Schools Act of 2000, shall inform contractors hired to apply pesticides at the schoolsite that the facility must comply with the Healthy Schools Act of 2000.

(d) Any person who is hired to apply pesticides at a child day care facility, as defined in Section 1596.750 of the Health and Safety Code, shall provide that facility's school designee with all of the following information at least 120 hours in advance of any pesticide application, except in the case of an emergency condition, as defined in Section 17609 of the Education Code:

(1) The pesticide product name.

(2) The pesticide manufacturer's name.

1 (3) The United States Environmental Protection Agency's
2 product registration number.

3 (4) The active ingredient or ingredients in the pesticide
4 product.

5 (5) The areas of application.

6 (6) The intended date of application.

7 (7) The reason for the pesticide application.

8 (e) If a person hired to apply pesticides contracts directly with
9 the property owner or his or her agent rather than directly with
10 the child day care facility, as defined in Section 1596.750 of the
11 Health and Safety Code, the property owner or his or her agent
12 must notify the contractor that a child day care facility is being
13 operated on the property at which the pesticides are to be applied
14 to enable the contractor to comply with subdivision (d).

15 SEC. 7. Section 1596.794 is added to the Health and Safety
16 Code, to read:

17 1596.794. The department shall serve as the liaison to child
18 day care facilities for the purposes of Sections 17608 to 17613,
19 inclusive, of the Education Code.

20 SEC. 8. Section 1596.845 of the Health and Safety Code is
21 amended to read:

22 1596.845. Prior to the issuance of a new license or special
23 permit pursuant to this chapter, Chapter 3.5 (commencing with
24 Section 1596.90), or Chapter 3.6 (commencing with Section
25 1597.30) the applicant shall attend an orientation given by the
26 department. The orientation given by the department shall outline
27 all of the following:

28 (a) The rules and regulations of the department applicable to
29 child day care facilities.

30 (b) The scope of operation of a child day care facility.

31 (c) The responsibility entailed in operating a child day care
32 facility.

33 (d) Information about the Healthy Schools Act of 2000 and
34 integrated pest management practices.